



The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

### **ISSUES**

The claimant alleged she acquired an occupational disease as a result of being exposed to various fumes and gases, including anhydrous ammonia, while working for the respondent as a pipe insulator between 1988 and 1990. The Administrative Law Judge denied benefits and held that claimant had failed to prove she had acquired an occupational disease or that she was disabled because of it. The claimant requested the Appeals Board to review those findings. The sole issue now before the Appeals Board is whether claimant has proven she acquired an occupational disease as defined by the Workers Compensation Act while working for the respondent during the period alleged.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons expressed below, the Award of the Administrative Law Judge should be affirmed.

Claimant contends she now has occupational asthma that was caused by breathing ammonia gases and other fumes when she worked as an insulator for the respondent during the period of 1988 through 1990. During this period, claimant alleges that on occasion she would breathe the fumes from anhydrous ammonia and eventually developed various symptoms including headache, chest pain, and would hyperventilate and gasp for air. Claimant testified her problems began in 1988 when a valve malfunctioned and ammonia fumes shot into her sinuses. Claimant's last significant exposure occurred in July 1990 when she found a pipe leaking ammonia.

The Workers Compensation Act provides that an individual is entitled to benefits when they acquire an occupational disease as a result of their employment. Occupational disease is defined by K.S.A. 44-5a01 as follows:

"(b) 'Occupational disease' shall mean only a disease arising out of and in the course of the employment resulting from the nature of the employment in which the employee was engaged under such employer, and which was actually contracted while so engaged. 'Nature of the employment' shall mean, for purposes of this section, that to the occupation, trade or employment in which the employee was engaged, there is attached a particular and peculiar hazard of such disease which distinguishes the employment from other occupations and employments, and which creates a hazard of such disease which is in excess of the hazard of such disease in general."

The parties presented the testimony of two medical experts, Kent B. Berquist, M.D., and Thomas James Bloxham, M.D., both board certified pulmonologists. Dr. Berquist, one of claimant's treating physicians, testified claimant had asthma and that the disease was compatible with exposure to irritating substances. Based on claimant's history, Dr. Berquist believes claimant's asthmatic condition was caused by the exposure to ammonia and other chemicals at work.

Respondent referred claimant to Dr. Bloxham for evaluation purposes only. Claimant's complaints to this doctor were shortness of breath when lifting fifty (50) pounds or climbing stairs while carrying thirty (30) pounds or more. By her own account, claimant has no wheezing. Claimant's chief complaints to Dr. Bloxham were sinus congestion, drainage, and throat tightness. Dr. Bloxham testified there was no evidence of asthma or hyperreactive airway disease in claimant. The doctor bases this opinion on the results of pulmonary function studies performed on claimant and a methacholine challenge test administered in November 1993 that was normal.

The Appeals Board finds the opinion of Dr. Bloxham to be the more credible. Although Dr. Berquist had claimant undergo a methacholine challenge test in October 1990 that indicated claimant has hyperreactive airways, the results of that test are invalid because two and one-half (2 1/2) times the amount of methacholine presently recommended was utilized in the test, an amount that could cause a positive reaction in anyone. Interestingly, before Dr. Bloxham had a methacholine challenge test administered to claimant in November 1993, Dr. Berquist recommended in his letter dated June 14, 1993, that another test be administered. Without positive results from a valid methacholine challenge test, there is little evidence, if any, that claimant has an asthmatic condition or any other hyperreactive airway disease.

Claimant bears the burden of proof to establish her claim. "Burden of proof" is defined in K.S.A. 44-508(g) as ". . . the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." The burden of proof is:

" . . . on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record." K.S.A. 44-501(a).

Based upon the record presented, the Appeals Board finds claimant has not proven she has acquired an asthmatic condition or any other occupational disease as a direct result of her employment with the respondent. Because of this finding, the issue whether claimant has been disabled as a result of an occupational disease is rendered moot.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated January 30, 1995, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jeffrey E. King, Salina, Kansas  
John W. Mize, Salina, Kansas  
Robert A. Anderson, Ellinwood, Kansas  
George R. Robertson, Administrative Law Judge  
David Shufelt, Acting Director